

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**ANDRE DANSBY,**

**Plaintiff,**

**VS.**

**SERGEANT ELTERIDGE and  
THE ALABAMA DEPARTMENT  
OF CORRECTIONS,**

## Defendants.

**Case No: 2:09-CV-2009-CLS-PWG**

## MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on December 17, 2010, recommending that the defendants motion for summary judgment be granted and this cause dismissed, with prejudice. Plaintiff filed objections on December 28, 2010, claiming that he has been denied due process because he has not been given an evidentiary hearing on his claims. (Doc. no.20)

The parties were all informed of the special report process utilized by the court. The plaintiff was informed that the defendants would file a response to his complaint in the form of a special report and then he would be allowed to respond to their special report. Plaintiff was advised that, unless he responded to the special report with affidavits, documents, or other materials that would create a genuine issue of

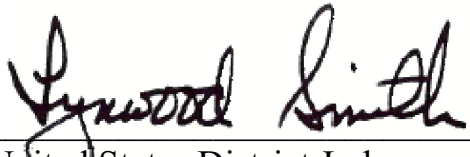
material fact as to the claims asserted in the complaint, the court could grant summary judgment to the defendants on the basis of the evidentiary materials submitted by them. *See Griffith v. Wainwright*, 772 F.2d 822 (11th Cir. 1985).

The defendants responded to the plaintiff's complaint with affidavits, incident reports, and disciplinary reports explaining the facts surrounding the incident about which the plaintiff complained. The plaintiff filed nothing in response to the defendants' special report, but now, in objecting to the magistrate judge's report and recommendation, he claims he has witnesses who can support his allegations. The plaintiff claims that he has the right to a hearing so he can present his eye witnesses. The magistrate judge recommended that the case be dismissed because the plaintiff failed to dispute the facts submitted by the defendants. Even though the plaintiff now claims that he has five witnesses who will support his claims, he has not submitted affidavits from those witnesses. It was the plaintiff's responsibility to obtain and file the affidavit in support of his claims in response to the defendants' special report.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections filed by the plaintiff, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and his recommendation is ACCEPTED. The Court EXPRESSLY FINDS that there are no genuine issues of material fact, and that the defendants are entitled to judgment as a matter of law. Accordingly, defendants

motion for summary judgment is due to be GRANTED, and this action is due to be DISMISSED with prejudice. A Final Judgment will be entered.

DONE this 31st day of January, 2011.

  
\_\_\_\_\_  
United States District Judge